

STATE OF MICHIGAN  
IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS  
Zahra, P.J., and Cavanagh and Schuette, JJ.

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

vs

Supreme Court No. 133264

JULIAS HOLLEY,  
Defendant-Appellee.

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Lower Court No. 05-3549  
Court of Appeals No. 264584

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133264

PLAINTIFF-APPELLANT'S  
SUPPLEMENTAL BRIEF

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## STATEMENT OF JURISDICTION

On May 25, 2007, this Court ordered that oral argument on the People's application for leave to appeal be scheduled, and that the parties be allowed to file supplemental briefs within 42 days (that is, by July 6).

## STATEMENT OF QUESTION PRESENTED

### I.

**The plain language of M.C.L. 750.483a demonstrates an intent to penalize persons who interfere with the reporting, investigation, and prosecution of crimes. The majority's ruling below (requiring proof beyond a reasonable doubt of the underlying crime as an element of 483a) would defeat the Legislature's intent in every case where the perpetrator's interference successfully thwarted prosecution of the underlying crime. Did the Court of Appeals err in determining the Legislative intent behind the express provisions of M.C.L. 750.483a?**

The People answer, "Yes."

## STATEMENT OF FACTS

Defendant was charged with felonious assault, interfering with the reporting of a crime, and habitual second. At his waiver trial before 3<sup>rd</sup> Circuit Judge Thomas Jackson, complainant Peggy Gordon testified that the father of her youngest daughter—defendant—came home drunk on March 7, 2005, and began arguing with her.<sup>1</sup> The argument continued in the living room in front of Gordon’s oldest daughter. Eventually, defendant went into the kitchen and got a knife.<sup>2</sup> Approaching with the weapon, he said, “I hurt you.” Gordon responded, “No you won’t,” and went to pick up the phone.<sup>3</sup> She told defendant she was calling the police.<sup>4</sup> He then cut the cord with the knife, preventing her from making the call.<sup>5</sup> Although Gordon admitted that defendant never pointed the knife directly at her, he was within arm’s reach from her and she thought he was going to hurt her.<sup>6</sup> Further, Gordon’s ten-year-old daughter told the police then and testified at trial that defendant said “I’m going to kill you” to Gordon.<sup>7</sup> No one else testified.

Judge Jackson determined that the People had not met their burden as to the felonious assault charge. As to the misdemeanor 750.483a count, the court initially indicated that, since Gordon “perceived” that defendant had committed a crime, and because he had then prevented her from

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<sup>1</sup>TR at 7.

<sup>2</sup>TR at 8.

<sup>3</sup>TR at 8.

<sup>4</sup>TR at 10.

<sup>5</sup>TR at 8.

<sup>6</sup>TR at 9-10.

<sup>7</sup>TR at 20.

reporting it, he was guilty of violating M.C.L. 750.483a. He thus provisionally found defendant guilty of count two, and allowed the parties a chance to research what standard of proof was required to establish the underlying crime, and whether a victim's perception that a crime was committed is sufficient.<sup>8</sup>

After reviewing briefs from both sides, Judge Jackson found that the purpose of the statute was to prevent conduct such as defendant's.

And I think the prosecution presents a very cogent argument here that when if someone, the basic thrust and reason, and objective of such a statute is, of course, I think, to prevent persons from attempting or to interfere with someone making a report, and certainly a person who at that time that they make that report should not be subject to whether or not someone is or should be convicted of an underlying crime or another crime beyond a reasonable doubt and that becomes I think critical to the meaning and purpose of the particular statute.<sup>9</sup>

Additionally, the trial court indicated that, although defendant had been acquitted of the underlying crime, that verdict likely would have been different if the standard had only been a preponderance of the evidence.<sup>10</sup> Thus, according to the court, "from the perspective of the complainant here of what she did and why, I think that under those circumstances that the statute's purpose is met and that the defendant did, in fact, try to prevent her from reporting a crime or an attempted crime here."<sup>11</sup>

On appeal, a two-judge majority of the Court of Appeals reversed and remanded, holding that the victim's perception that the underlying crime had occurred was insufficient to sustain a guilty

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<sup>8</sup>TR at 27.

<sup>9</sup>SE at 5.

<sup>10</sup>SE at 5.

<sup>11</sup>SE at 5.

verdict of interfering with the reporting of that crime. Instead, according to the majority, while a defendant need not be convicted of the underlying crime, that crime must be proved beyond a reasonable doubt in order to convict a defendant of interfering with the reporting of it. Looking to this Court's holding in a felony-firearm case, Judges Zahra and Cavanagh found that the Legislature had to have known when making it illegal to "prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime *committed or attempted* by another person," that *People v. Burgess*, 419 Mich. 305 (1984), had held that similar language in the felony-firearm statute required the underlying felony to be proved beyond a reasonable doubt. Thus, given the possibility that Judge Jackson had convicted defendant of violating M.C.L. 750.483a absent proof beyond a reasonable doubt that he had committed an underlying crime, the court remanded for further findings by the trial court.

Judge Schuette dissented, arguing that nothing in the statute in question mandates that the defendant be convicted of the underlying crime, which the logic, if not the holding, of the majority requires. Judge Schuette would have affirmed, because although a reasonable doubt existed whether defendant had committed felonious assault, that did not mean he did not commit the underlying crime, only that prosecution failed to prove defendant's guilt beyond a reasonable doubt.

This application thus ensues.

## ARGUMENT

### I.

**The plain language of M.C.L. 750.483a demonstrates an intent to penalize persons who interfere with the reporting, investigation, and prosecution of crimes. The majority's ruling below (requiring proof beyond a reasonable doubt of the underlying crime as an element of 483a) would defeat the Legislature's intent in every case where the perpetrator's interference successfully thwarted prosecution of the underlying crime. The Court of Appeals erred in determining the Legislative intent behind the express provisions of M.C.L. 750.483a.**

#### **Standard of Review:**

This court reviews questions of statutory construction de novo.<sup>12</sup>

#### **Discussion:**

The Court of Appeals must be reversed because its reading of MCL 750.483a defeats the whole purpose of that statute. As this Court has affirmed time and time again, the “fundamental obligation” of the judiciary in interpreting any statute “is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.”<sup>13</sup> That is, courts must consider the object of the statute and the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose.<sup>14</sup> And while rules of statutory construction exist to help determine legislative intent, they do not substitute for it, nor should they be applied mechanically, without regard for the overall purpose implied by the statute.<sup>15</sup> As this Court said in *City of Grand*

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<sup>12</sup>*Paige v. City of Sterling Heights*, 476 Mich. 495, 504 (2006).

<sup>13</sup>*Id.* (citations and internal quotation marks omitted).

<sup>14</sup>See *Koontz v. Ameritech Services, Inc.*, 466 Mich. 304, 326 (2002).

<sup>15</sup>*City of Grand Rapids v. Crocker*, 219 Mich. 178, 182 (1922).

*Rapids v. Crocker*, rules of construction “serve but as guides to assist the courts in determining such intent with a greater degree of certainty.”<sup>16</sup> Here, the Court of Appeals focused myopically on a subsidiary principle of statutory construction while overlooking its fundamental obligation to glean the legislative intent from the words expressed in the interfering-with-crime-reporting statute.

Justice Young’s five-justice majority opinion in *People v. Hawkins*<sup>17</sup> best explains the error in such mechanistic application of statutory construction rules without regard for the overall purpose and language of a statute. In *Hawkins*, the Court of Appeals had upheld the exclusion of evidence discovered in violation of M.C.L. 780.653, which requires that a search warrant affidavit indicate that the informant was credible and that his information was reliable.<sup>18</sup> By 2003, when *Hawkins* was decided, the “legislative acquiescence” and “re-enactment” principles of statutory construction supported, if not required, the result reached by the Court of Appeals. That is because, first, in 1984 this Court had held that the exclusionary rule applied to evidence seized in violation of section 780.653.<sup>19</sup> Second, the Legislature then amended section 653 in response to other parts of the statutory analysis in that case—*Sherbine*—but did not address the exclusionary rule. Those circumstances led this Court in a 1995 case—*People v. Sloan*<sup>20</sup>—to find that the Legislature had acquiesced in the application of the exclusionary rule to violations of section 653.<sup>21</sup> More

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<sup>16</sup>*Id.*

<sup>17</sup>468 Mich. 488 (2003).

<sup>18</sup>*Id.* at 503.

<sup>19</sup>*People v. Sherbine*, 421 Mich. 502 (1984).

<sup>20</sup>450 Mich. 160 (1995).

<sup>21</sup>*Id.* at 183-84.

importantly, since the Legislature had not just left 750.653 alone after the exclusionary-rule applications of *Sherbine* and *Sloan*, but had actually amended other parts of the statute *in response* to *Sherbine*, the “re-enactment rule” also required a finding that the Legislature intended to apply the exclusionary rule to section 750.653 violations.<sup>22</sup>

Nevertheless, this Court in *Hawkins* reversed, holding that no reason existed to subordinate its primary principle of construction—to ascertain Legislative intent by reference to the actual statutory language—to secondary considerations such as legislative acquiescence and the re-enactment rule.<sup>23</sup> Although the re-enactment rule—properly limited and applied—still functioned as a valuable construction aid, this Court warned:

it cannot be employed indiscriminately and without recognition of the fact that its more expansive versions impose an unreasonable burden on the Legislature to affirmatively scan our appellate casebooks to discern judicial constructions of statutes that the Legislature desires for entirely other reasons to amend.<sup>24</sup>

Thus, the absence of any statutory language incorporating the exclusionary rule, and the fact that neither *Sherbine* or *Sloan* had performed the requisite examination of legislative intent, led this Court in *Hawkins* to preclude application of the exclusionary rule to 750.653 violations.<sup>25</sup>

But ignoring the plain language of the text, and instead indiscriminately employing a subsidiary construction aid is exactly what the two-judge majority did below in this case. The statute

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<sup>22</sup>The re-enactment rule states that, if a legislature reenacts a statute without modifying a high court’s practical construction of that statute, that construction is implicitly adopted. See Justice Cavanagh’s dissent in *Hawkins*, *supra* at 519, citing Singer, 28 Statutes and Statutory Construction (2000 rev), Contemporaneous Construction, § 49:09, pp. 103-112.

<sup>23</sup>468 Mich. at 509.

<sup>24</sup>*Id.* at 509 n. 20.

<sup>25</sup>*Id.* at 511-12.

at issue here—M.C.L. 750.483a—criminalizes attempts to interfere with the reporting, investigating, or prosecution of crimes. More specifically, this provision makes it illegal to do, *inter alia*, any of the following:

- “Prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime committed or attempted by another person.”<sup>26</sup>
- “Retaliate or attempt to retaliate against another person for having reported or attempted to report a crime committed or attempted by another person.”<sup>27</sup>
- “Give, offer to give, or promise anything of value to any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.”<sup>28</sup>
- “Threaten or intimidate any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.”<sup>29</sup>
- “Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.”<sup>30</sup>

Nowhere does section 483a require a conviction on the underlying crime as an element of prosecution. Moreover, while the term “crime” is not defined in section 483a, the definitions section of the penal code does provide that a crime is “an act or omission forbidden by law which is not designated as a civil infraction, and which is is punishable *upon conviction* by any 1 or more of the

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<sup>26</sup>Section (1)(b).

<sup>27</sup>Section (1)(c).

<sup>28</sup>Section (3)(a).

<sup>29</sup>Section (3)(b).

<sup>30</sup>Section (5)(a).

following . . . .”<sup>31</sup> Thus, both as a matter of common sense and statutory definition, an illegal act is a “crime” regardless whether it results in a conviction. Many reasons exist why an illegal act may be committed but not result in a conviction, but the bottom line here is that the plain language of 750.483a, especially when coupled with 750.5, does not impose any requirement that the underlying crime be proved beyond a reasonable doubt. The purpose of 750.483a is clearly to deter and punish those who interfere in the criminal investigatory process. Whether that process would ultimately have resulted in a conviction is irrelevant.

The Court of Appeals' ruling in this case, requiring proof beyond a reasonable doubt of the underlying crime before a conviction could be had under the instant statute, not only adds terms not found in the statute, but would defeat the Legislature's intent in most cases. More tellingly, under the holding below, defendants would avoid prosecution under section 483a in *all* cases where their interference was successful. That is, any time that a defendant prevented a successful prosecution of the underlying crime by:

- physically preventing the reporting of the crime,
- retaliating against a person for reporting the crime so that they refuse to pursue the prosecution,
- bribing or threatening a witness to give a police statement which mitigates or denies the defendant's involvement,
- bribing or threatening a witness to withhold evidence of the defendant's involvement, or
- tampering with evidence,

such defendant will thereby immunize himself from prosecution under M.C.L. 750.483a, because, as of now, the Court of Appeals requires proof beyond a reasonable doubt that the underlying crime was committed before a defendant can be convicted of the interfering-with-crime-reporting statute.

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<sup>31</sup>MCL 750.5 (emphasis added).

The words expressed in M.C.L. 750.483a contain no such provision, and, in tandem with the definition of “crime” in section 5, demonstrate the opposite intent.

In erroneously holding otherwise, the Court of Appeals' two-judge majority relied on the facts that a phrase similar to “crime committed or attempted” is found in the felony-firearm statute, and that this Court in *People v. Burgess*<sup>32</sup> required that in felony-firearm cases the underlying felony must be proved beyond a reasonable doubt. In other words, according to the court below, the Legislature knew how “commits or attempts to commit a felony” had been interpreted in *Burgess*, and so must have incorporated that interpretation when including similar wording in section 483a.

This was wrong for two reasons. First, it elevated a principle of statutory construction—that the Legislature is presumed to know how similar phrases used in other statutes have been interpreted by the courts and intends the same meaning—over the court’s duty to effectuate the plain language of and clear intent behind the statute. As indicated, the Court of Appeals’ holding would effectively gut 750.483a in every case in which a defendant was successful in using threats and intimidation to escape prosecution for the underlying offense. As in *Hawkins*, this was error. There is no reason to believe that the Legislature intended to incorporate into M.C.L. 750.483a *Burgess*’s judicial construction of “commits or attempts to commit a crime” as found in M.C.L. 750.227b. The statutes are not related and serve totally different purposes. As this Court pointed out in *Hawkins*, a rule that assumes that the Legislature intends to incorporate judicial constructions of similar phrases (not even terms of art) from unrelated statutes imposes an unreasonable burden on the Legislature.<sup>33</sup> This is especially true when the term at issue is already explicitly defined in the Penal Code.

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<sup>32</sup>419 Mich. 305, 310 (1984).

<sup>33</sup>468 Mich. at 509 n. 20.

Second, even had the Court of Appeals been right to search elsewhere to define “crime committed or attempted,” this Court’s judicial interpretation of the felony-firearm statute was the wrong place to look. Simply put, the relationship between the felony and the firearm in 750.227b is not equivalent to the relationship between the interference and the crime in 750.483a. For example, in the felony-firearm statute, but not in section 483a, the Legislature provided that any sentence would be “in addition to the sentence imposed for the conviction of the felony or attempt to commit the felony, and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.”<sup>34</sup> In other words, the Legislature contemplated that every felony firearm conviction would accompany a conviction on the underlying crime. No such provision was included in section 483a.

Also, it is nearly impossible to imagine a scenario where one could be convicted of felony firearm but not the underlying felony (absent lenity or mistake). In fact, in both *People v. Lewis*<sup>35</sup> and *Burgess*, this Court assumed without a word of analysis that such a verdict would be logically inconsistent.<sup>36</sup> This is because the proofs are virtually identical. Not so for section 483a. For instance, unlike in the felony-firearm situation, 483a does not require that the underlying crime be committed by the same person who interfered in the reporting of it. Thus, one can easily imagine an instance in which the underlying defendant is never apprehended, or in which the evidence in his case is suppressed, and so no conviction on the underlying crime could possibly be had. Yet, it would not be logically inconsistent to find the person who interfered in the reporting and

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<sup>34</sup>MCL 750.227b(2).

<sup>35</sup>415 Mich. 443 (1983).

<sup>36</sup>415 Mich. at 450-53; 419 Mich. at 310-11.

investigation guilty under 750.483a. The point here is not that the prosecutor under such circumstances would be unable to prove the underlying crime beyond a reasonable doubt; the point is that the underlying crime and the felony firearm are more closely joined than the underlying crime and the interfering with the reporting or investigation of it. In other words, the felony-firearm “crime committed or attempted” analysis cannot be imported wholesale into the 750.483a statutory framework as the Court of Appeals did below.

Undoubtedly, part of the Court of Appeals’ reluctance to adhere to the plain language of the statute was its concern that the victim’s mere “perception” of a crime committed or attempted would suffice to trigger section 483a. Again, this Court is respectfully directed back to the express words employed in the statutory scheme. As provided by 750.5, an act is not thereby a crime merely because someone perceives it to be so—but only if it is actually forbidden by law. A putative victim’s subjective views of the law do not determine whether section 483a has been violated.

Correspondingly, while it may be true that the *facts* constituting the illegal act are subject to the reporter’s perception, that is immaterial. It will always be so. Take section 483a(3)(a) for example, which prohibits offering bribes to influence a person’s statement to a police officer “conducting a lawful investigation of a crime.” In such a case, the officer in question obviously perceives facts that, if true, will constitute a crime—otherwise, why conduct an investigation. Those facts may turn out to be false, but subsection (3)(a) still makes the attempted bribe illegal. In other words, a person who “perceives” the law inaccurately is not actually reporting a “crime,” and therefore it is not a violation of 750.483a to interfere. But a person who perceives facts that do constitute an illegal act, even though that perception may be faulty, still cannot be interfered with in the reporting, just as a person may not offer a bribe to a witness in an investigation of a crime even

though the investigation does not result in proof beyond a reasonable doubt of the suspect's guilt.<sup>37</sup> In short, the essence of a section 483a offense has nothing to do with the veracity of the facts underlying the reported crime. The prohibited conduct is the interference, retaliation, threats, bribes, and tampering occurring during the investigatory *process*. The Court of Appeals majority failed to recognize this important distinction.

Finally, even if some quantum of proof of the underlying crime is necessary, such existed here. That is, although a reasonable doubt may have existed as to defendant's felonious assault charge, that does not mean he did not commit that crime. In fact, Judge Jackson stated that "if this was a lesser standard, such as a preponderance of the evidence or some other lesser factors here, [the acquittal on the assault charge] might have been quite a different circumstance."<sup>38</sup> In other words, the fact that defendant had committed an underlying crime was not merely based on the victim's subjective "perception." The police believed a crime had been committed or else would not have brought a warrant. The prosecutor believed likewise or would not have signed it. Defendant had the opportunity for a preliminary exam and a motion to quash if he believed no crime had been committed. And Judge Jackson strongly suggested that he also believed defendant had assaulted witness Gordon, but the crime had not been proved beyond a reasonable doubt. There is no reason, and certainly no intent evidenced in the statute, to exclude defendant's conduct—cutting the phone line and preventing Gordon from contacting the police after he drew a knife on her—from criminal liability. The Court of Appeals must be reversed.

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<sup>37</sup>And there would be no need to create a rule requiring that the underlying crime be proved beyond a reasonable in order to guard against false accusations, in light of the fact that M.C.L. 750.411a already penalizes the false reporting of crimes.

<sup>38</sup>7.28.05 at 5.

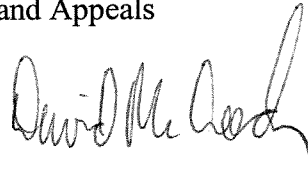
**RELIEF**

THEREFORE, the People request this Honorable Court to reverse the Court of Appeals and affirm defendant's conviction, or, in the alternative, to grant the People's application for leave to appeal.

Respectfully submitted,

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